Public Prosecutor v Mahanthiran a/l Durasamy

HIGH COURT (SHAH ALAM) — CRIMINAL APPEAL NO 45–56 OF 2003
NALINI PATHMANATHAN JC
7 AUGUST 2007

Criminal Procedure — Sentencing — Factors to be considered — Public interest — Whether deterrent sentence called for — Objective of legislature

Criminal Procedure — Sentencing — Factors to be considered — Quantity and Weight of Drugs — Co-operation with authorities — Whether a relevant factor to consider

The accused was originally charged with trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act) and for possession under s 12(2) of the Act. During the course of trial, an alternative charge of possession under section 6 of the Act was preferred against the accused, punishable under s39A(2) of the Act. The accused pleaded guilty to the alternative charge. The accused was convicted and his plea in mitigation was heard and deliberated upon.

Held, sentencing the accused to 13 years imprisonment for the first charge and two years each for the second to fourth charges, all to run concurrently; and whipping of 10 strokes:

(1) The principles of sentencing which fulfill a four-fold function, namely, to punish, deter, reform and rehabilitate have been enunciated by many eminent judges over the years (see para 14).

(2) Public interest is the overriding principle which is to be borne in mind in deciding on a particular sentence. It is not a meaningless incantation invoked by the courts when imposing sentence. Public interest refers to the deterrence and rehabilitation of persons such that they do not commit drug related crimes. It relates specifically to the monstrous reality of the effects and consequences of drugs on the people of this nation. It refers to human beings, to citizens who are torn away from lives full of purpose and activity and marks their descent into a meaningless existence where their primary focus is the procurement and use of drugs, culminating with time in their having no control over their actions. For the young people of this nation, who hold the future in their hands, the use of drugs more often than not, leads to an erosion of their potential and aspirations to lead fulfilled, useful and healthy lives. Drugs single-handedly effect the transformation of law abiding youths into young barbarians with no feeling or thought who eventually justify their craving for these addictive substances by turning to crime. Drugs mark the destruction of family life, culture and values and eats into the fabric of the

well-being of people at large. It denotes a long if not unending term of pain and suffering for those who partake of this odious habit. But it does not stop there. Such pain and suffering extends unavoidably to the parents, children and relatives of these persons who, arguably, suffer considerably more. Consider then the situation when this scenario is replicated hundreds of times over, and there you have the reality of public interest (see para 15).

(3) In the instant case, the amount of drugs which the accused possessed is in excess of two kilogrammes, 2,2853 or 22,853 gms. to be precise. This is clearly not an amount that an individual would use for himself. It amounts to some forty times the minimum permissible level under s 39A(2) of the Act. In conjunction with this, the accused was also in possession of considerably smaller quantities of ketamines, monoacetylmorphine and heroin. In short, he was in possession of a full complement of prohibited drugs. This is clearly a serious offence, that warrants severe repercussions (see para 16).

(4) It is established practice that a first offender should receive some mitigation of sentence for most offences, save where the offence is so serious that there is very little basis to give concession to this fact. This is therefore a mitigating factor, although the extent to which this fact does so is restricted, as drug offences remain an ever escalating problem (see para 19).

(5) The accused's ready co-operation with the police from the time they stopped him and questioned him until such time as he led them to his house and voluntarily surrendered the subject cannabis is another factor that should be accorded some mitigating value. This allowed for considerable savings in terms of the time taken for the investigation of this offence (see para 20).

(6) From learned counsel's plea in mitigation it is apparent that both the accused and his family have suffered irreparably as a consequence of these offences. However this underlines once more the deleterious effects of drugs and unfortunately the effects of the accused's wrongdoing have been felt by those nearest and dearest to him, his daughter, aged mother and siblings. Only the accused can bear blame for this. The hardship suffered by the accused and his family is not therefore a factor that can be given significant weight (see para 21).

(7) Significantly, the credit or discount to be given in favour of the accused person is not on the maximum sentence imposed by law but on the sentence that is likely to have been passed if the accused had claimed trial and been found guilty. As against this the courts have also recognized that it is not in every case that a discount or mitigation is entitled as of right. Where the offence is extremely grave, the courts have determined that public interest outweighs the plea of guilt as a mitigating factor, in which instance it will not be taken into account. In the instant case however, the circumstances are not such as to justify the plea of guilt being ousted in favour of public interest (see para 23).

(8) There is ample authority which stipulates that a sentence imposed should reflect to some extent, the weight or quantity of the drugs in the possession of an accused person. The weight of the drugs in this case, primarily the 22,853 gms. of cannabis, a relevant factor that has to be given weight (see paras 24–26).

[Bahasa Malaysia summary

Tertuduh pada asalnya dituduh mengedar di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 (Akta) dan memiliki di bawah s 12(2) Akta. Semasa perbicaraan, satu pertuduhan pilihan kerana pemilikan di bawah s 6 Akta telah diberikan terhadap tertuduh, boleh dihukum di bawah s 39A(2) Akta. Tertuduh mengaku salah kepada pertuduhan pilihan. Tertuduh telah disabitkan dan rayuannya untuk meringankan hukuman telah didengar dan telahpun dipertimbangkan.

Diputuskan,hukuman 13 tahun penjara untuk pertuduhan pertama dan dua tahun untuk setiap pertuduhan dua sehingga keempat, kesemuanya berjalan serentak; dan sebatan sebanyak 10 rotan:

(1) Prinsip-prinsip dalam menjatuhkan hukuman hendaklah memenuhi empat fungsi, iaitu, menghukum, mencegah, membaiki dan memulih telah disebut oleh hakim-hakim utama selama bertahun-tahun kebelakangan ini (lihat perenggan 14).

(2) Kepentingan awam adalah prinsip utama yang perlu disematkan dalam fikiran dalam menentukan sesuatu hukuman tertentu. Ia bukanlah azimat yang sia-sia yang telah digunapakai oleh mahkamah-mahkamah apabila menjatuhkan hukuman. Kepentingan awam merujuk kepada pencegahan dan memulihkan seseorang supaya mereka tidak melakukan kesalahan yang ada hubungkait dengan dadah. Ia mencakupi khususnya kepada realiti yang amat menakutkan berikutan kesan dan akibat penggunaan dadah kepada rakyat negara ini. Ia merujuk kepada insan, kepada warganegara yang diporak-perandakan hidupnya dari tujuan dan aktiviti dan menandakan kejatuhan kepada kewujudan yang sia-sia bila fokus utama adalah mendapatkan dan menggunakan dadah, membatasi masa tiada kawalan ke atas tindak-tanduk mereka. Untuk orang-orang yang muda dalam negara ini, yang mempunyai masa depan ditangannya, penggunaan dadah lebih kerap dari biasa, membawa kepada keruntuhan potensi dan aspirasi untuk membawa kepemimpinan yang berguna dan kehidupan yang sihat. Dadah itu sendiri memberi kesan kepada tranformasi kepatuhan remaja kepada undang-undang kepada orang yang kurang sopan dengan tiada perasaan atau fikiran yang lambat laun akan menghalalkan jenayah kerana keperluan mereka kepada bahan-bahan yang telah menjadi ketagihan. Dadah menandakan keruntuhan kehidupan berkeluarga, budaya dan nilai-nilai dan memberi kesan kepada orang awam keseluruhannya. Ia akan memberikan kesakitan dan tanggungan bagi masa yang panjang dan tidak berakhir untuk sesiapa yang yang telah merasai tabiat yang dibenci ini. Tetapi ia tidak akan berakhir di situ. Kesakitan dan tanggungan ini tidak dapat dielakkan oleh ibu bapa, anak-anak dan saudara mara orang-orang ini, juga menanggungnya lebih lagi. Cuba pertimbangkan tentang situasi bila senario ini diulang beratus-ratus kali, dan di situ kamu mempunyai realiti tentang kepentingan awam. (lihat perenggan 15).

(3) Dalam kes ini, jumlah dadah yang dimiliki oleh tertuduh adalah melebihi dua kilogram, 2,2853 atau lebih tepat lagi 22,853 gram. Ini secara jelasnya bukan jumlah yang akan digunakan sendiri oleh seseorang individu. Ia bermaksud

kepada empat puluh kali jumlah minimum yang dibenarkan di bawah s 39A(2) Akta. Sehubungan dengan ini, tertuduh juga memiliki kuantiti kecil ketamin, monoacetylmorphine dan heroin. Pendeknya, beliau memiliki semua jenis dadah-dadah berbahaya. Ini jelasnya merupakan kesalahan yang serius, yang akan menerima akibat yang sangat berat. (lihat perenggan 16).

(4) Ia telah menjadi amalan biasa bahawa pesalah pertama mesti menerima sedikit keringanan hukuman untuk kebanyakkan kes, kecuali jika kesalahan adalah serius sangat sedikit asas untuk menggunapakai fakta ini. Ini dengan sebab itu menjadi faktor meringankan hukuman, walaupun fakta keseluruhan menghadkannya, kerana kesalahan dadah masih lagi menjadi masalah yang akan terus meningkat (lihat perenggan 19).

(5) Kesediaan tertuduh bekerjasama dengan pihak polis dari masa beliau ditahan dan disoalsiasat sehinggalah ketika beliau membawa polis ke rumahnya dan dengan sukarela menyerahkan ganja adalah faktor lain yang boleh dipertimbangkan sebagai nilai harga untuk meringankan hukuman. Ini menyebabkan penjimatan yang munasabah dalam masa yang diambil untuk siasatan kesalahan ini. (lihat perenggan 20).

(6) Daripada rayuan meringankan hukuman peguamcara ia adalah jelas bahawa kedua-dua tertuduh dan keluarganya telah menanggung sesuatu yang tidak dapat dibaik pulih kesan daripada kesalahan-kesalahan ini. Walaubagaimanapun, ini menunjukkan sekali lagi kesan-kesan dadah yang tidak dapat dipadamkan yang malangnya kesan perlakuan salah tertuduh telah pun dirasai oleh orang terdekat dan yang menyayanginya, anak perempuannya, ibu yang telah berusia dan adik-beradiknya. Hanya tertuduh yang boleh menanggung kesalahan ini. Kesusahan yang dialami oleh tertuduh dan keluarganya bukanlah faktor yang boleh dijadikan pertimbangan (lihat perenggan 21).

(7) Ertinya, tambahan dan penolakkan yang akan diberikan kepada tertuduh bukan pada hukuman maksimum yang akan dilaksanakan oleh undang-undang tetapi hukuman yang seolah-olah akan diberikan jika tertuduh ingin dibicarakan dan didapati bersalah. Berlawanan dengan ini mahkamah juga mengiktiraf bahawa ia bukan hak dalam setiap kes bahawa pemotongan atau rayuan pengurangan hukuman diberikan. Bila kesalahan adalah sangat berat, mahkamah-mahkamah menentukan bahawa kepentingan awam mengatasi pengakuan bersalah sebagai faktor rayuan meringankan hukuman, dalam setiap keadaan ia tidak akan diambil kira. Dalam kes ini sebaliknya, keadaan-keadaan tidak membenarkan pengakuan bersalah akan dapat mengatasi kepentingan awam (lihat perenggan 23).

(8) Terdapat banyak otoriti yang menerangkan bahawa hukuman yang dikenakan mestilah mencerminkan berat atau kuantiti dadah dalam milikan tertuduh. Berat dadah dalam kes ini, yang utamanya 22,853 ganja, adalah faktor relevan yang perlu diberikan pertimbangan (lihat perenggan 24–26).]

Notes

For a case on factors to be considered, see 5(2) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 3949.

Cases referred to

Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (refd)
PP v Hairul Din bin Zainal Abidin [2001] 6 MLJ 146 (refd)
PP v Puteh Nordin & Anor. [1983] 2 MLJ 292 (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45 (refd)
PP v Tia Ah Leng [2000] 5 MLJ 401 (refd)
R v Kenneth John Ball 35 Cr App 164
Sau Soo Kim v PP [1975] 2 MLJ 137 (refd)
Surentheran Selvaraja v PP [2006] 1 MLJ 641 (refd)
Yusmarin bin Samsudin v PP [1999] 4 MLJ 625 (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 6, 12, 39A, 39B

Azar Irwan (Attorney General's Chambers) for the prosecution.
Imran (Alida Imran & Co) for the accused

Nalini Pathmanathan JC:

[1] Mahanthiran a/l Durasamy ('the accused') was originally charged with:

(i) Trafficking in 2,218.53 gm (2.21853 kg.) of cannabis under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') punishable under s 39B(2) of the same Act; ('Charge 1') and

(ii) Possession of 1.37 gm of ketamine, 0.06 gm of heroin and 0.13 gm of monoacetylmorphine under s 12(2) of the Act which is punishable under s 12(3) of the Act. Three charges were preferred against him in respect of such possession.

[2] The accused pleaded not guilty and claimed trial in respect of all the charges. The trial proceeded for several days over the course of about three months and twelve prosecution witnesses completed their evidence. Consequent however, to a representation having been made on behalf of the accused, an alternative charge of possession under s 6 of the Act was preferred against the accused in respect of the 22,185.3 gms. or 2.21853 kg. of cannabis, which is punishable under s 39A(2) of the Act.

FACTS OF THE CASE

[3] On 29 March 2002 at about 5pm, the accused returned to his home at no 32, Jalan 15, Taman Perkasa, Batu 14, in Hulu Langat on his motorcycle WJS 5975. When he returned home he received a telephone call to the effect that a young boy would deliver some cannabis to him.

[4] The accused pleaded guilty to the alternative charge, fully understanding the nature and consequences of the alternative plea. I have read the facts, seen the exhibits and considered the evidence as a whole particularly the chemist's report and

am satisfied that offences under s 6 and s 12(2) of the Act were committed, which are punishable under s 39A(2) and s 12(3) of the Act.

[5] The accused was convicted and his plea in mitigation heard and deliberated upon.

PLEA IN MITIGATION ON BEHALF OF THE ACCUSED

[6] Counsel for the accused put forward a persuasive plea in mitigation. It was pointed out that the accused was forty years old. The offences were committed when he was thirty-four years old, and he has been in remand for the past six years.

[7] The accused was married in accordance with customary rites and has one child of that union. The accused's partner has however, left him and married another individual. She testified to this effect during the course of this trial. His daughter who is now aged six is looked after by his elder brother and sister-in-law.

[8] The accused is the youngest of 10 siblings. Four of his siblings have died. He was unable to attend the funeral of two of those siblings as he was in remand. This has left an indelible mark on the conscience of the accused, giving rise in turn to a deep-seated sense of hatred against himself. It has, says counsel, brought home to the accused the gravity of the offences he has committed and invoked a feeling of deep remorse. The accused has suffered both physically and mentally.

[9] The accused was educated until he was aged 15 up to the level of Form 3. This he says was his greatest mistake, and indeed it is true that education is perhaps the greatest ward against crimes of this nature as it inculcates in youth not only the ability to earn a living, but plants and nurtures the growth of a cognizance as to that which is right and wrong in society at an early age. Without this, youths of today are left unanchored and tempted easily into the ugly, profiteering world of drugs.

[10] The court was also urged to take into account the plea of guilt as a mitigating factor and the fact that this is the accused's first offence. As for the four different charges preferred, learned counsel submitted that sentences for these offences should run concurrently as all the charges relate to one transaction.

SUBMISSIONS OF THE PUBLIC PROSECUTOR

[11] The learned deputy public prosecutor asked the court to give consideration to the fact that under s 39A(2) of the Act, the minimum weight provided is 50 gms., while in the instant case the quantity involved in the first charge alone was 2218.53 gms. some forty times the permissible level. With his usual candour he advised the court that the accused had accorded his full co-operation to the police and confirmed that the accused had no previous offences.

CONSIDERATIONS IN IMPOSING SENTENCE

[12] In deciding on an appropriate punishment I have given consideration to the facts of the case and the plea in mitigation. All measure of punishment is, first and foremost, regulated by the statutory provisions under s 39A(2) and s 12(3) of the Act.

[13] Under s 39A(2) of the Act, the punishment prescribed on conviction, is not less than five years imprisonment and the maximum is life imprisonment together with a mandatory whipping of 10 strokes. Under s 12(3) of the Act, the punishment prescribed is a fine not exceeding RM100,000 or a term of imprisonment not exceeding five years or both.

[14] The principles of sentencing which fulfill a four-fold function, namely, to punish, deter, reform and rehabilitate have been enunciated by many eminent judges over the years. The locus classicus on this issue is the oft-quoted statement of Hilberry J, in *R v Kenneth John Ball* 35 Cr App 164:

> … In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition that if the offender is caught and brought to justice the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to the honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe...

[15] Public interest then is the overriding principle which is to be borne in mind in deciding on a particular sentence. What does public interest mean in the context of offences relating to drugs? It is not a meaningless incantation invoked by the courts when imposing sentence. Public interest refers to the deterrence and rehabilitation of persons such that they do not commit drug related crimes. It relates specifically to the monstrous reality of the effects and consequences of drugs on the people of this nation. It refers to human beings, to citizens who are torn away from lives full of purpose and activity and marks their descent into a meaningless existence where their primary focus is the procurement and use of drugs, culminating with time in their having no control over their actions. For the young people of this nation, who hold the future in their hands, the use of drugs more often than not, leads to an erosion of their potential and aspirations to lead fulfilled, useful and healthy lives. Drugs single-handedly effect the transformation of law abiding youths into young barbarians with no feeling or thought who eventually justify their craving for these addictive substances by turning to crime. Drugs mark the destruction of family life, culture and values and eats into the fabric of the well-being of people at large. It denotes a long if not unending term of pain and suffering for those who partake of this odious habit. But it does not stop there. Such pain and suffering extends unavoidably to the parents, children and relatives of these persons who, arguably, suffer considerably more. Consider then the situation when this scenario is replicated hundreds of times over, and there you have the reality of public interest.

[16] In the instant case, the amount of drugs which the accused possessed is in excess of two kilogrammes, 2,2853 or 22,853 gms. to be precise. This is clearly not an amount that an individual would use for himself. It amounts to some forty times the minimum permissible level under s 39A(2) of the Act. In conjunction with this, the accused was also in possession of considerably smaller quantities of ketamines, monoacetylmorphine and heroin. In short, he was in possession of a full complement of prohibited drugs. This then, in the context I have spelt out, is clearly a serious offence, that warrants severe repercussions.

[17] The legislation in relation to drug related offences clearly denotes that offences of this nature are not to be dealt with lightly and the imposition of a sentence should mirror the gravity with which such drug related offences are viewed. To do otherwise would be to defeat the object of the legislation (*Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401). Bearing in mind this principle/tenet as the being the prime consideration in assessing an appropriate sentence, the individual case has then to be considered on its merits. Therefore, as against this spectre of the public interest, I have weighed and taken into account the interests of the accused as an individual.

FACTORS TO BE CONSIDERED IN THIS CASE

[18] The facts available for consideration in this case are as set out by the prosecution in the Statement of Facts and the plea in mitigation. From this it is apparent that the accused, who is forty years old, is a first offender who was fully co-operative with the police and led them to his home and surrendered the cannabis in his possession on arrest. It is also evident that the accused pleaded guilty as soon as he reasonably could in these proceedings.

FIRST OFFENDER

[19] It is established practice that a first offender should receive some mitigation of sentence for most offences, save where the offence is so serious that there is very little basis to give concession to this fact (see *Public Prosecutor v Hairul Din bin Zainal Abidin* [2001] 6 MLJ 146). This is therefore a mitigating factor, although the extent to which this fact does so is restricted, as drug offences remain an ever escalating problem.

ACCUSED'S CO-OPERATION WITH THE POLICE

[20] The accused's ready co-operation with the police from the time they stopped him and questioned him until such time as he led them to his house and voluntarily surrendered the subject cannabis is another factor that should be accorded some mitigating value. This allowed for considerable savings in terms of the time taken for the investigation of this offence.

HARDSHIP SUFFERED BY THE ACCUSED AND HIS FAMILY

[21] From learned counsel's plea in mitigation it is apparent that both the accused and his family have suffered irreparably as a consequence of these offences.

The accused's wife/partner left him and the child of their union, now aged six, was effectively orphaned. If not for the accused's close-knit family, in particular his brother and sister-in-law who took this child into their home, the child would have been abandoned to a far worse fate. However this underlines once more the deleterious effects of drugs and unfortunately the effects of the accused's wrongdoing have been felt by those nearest and dearest to him, his daughter, aged mother and siblings. Only the accused can bear blame for this. The hardship suffered by the accused and his family is not therefore a factor that can be given significant weight.

PLEA OF GUILT BY THE ACCUSED

[22] The general rule is that a plea of guilt affords the accused some measure of discount in the sentence to be imposed. As stated in *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 137, by Lee Hun Hoe CJ Borneo (at that time):

> Whether a person is a hardened criminal or not, I feel that a plea of guilty should be treated as a mitigating factor. It not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many, particularly the witnesses …

[23] In *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, it was held that a plea of guilt entitled the accused to a discount of one-third to one quarter of the sentence. This principle of sentencing has also been expounded in detail in *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45 by Visu Sinnadurai J Significantly, the credit or discount to be given in favour of the accused person is not on the maximum sentence imposed by law but on the sentence that is likely to have been passed if the accused had claimed trial and been found guilty. As against this the courts have also recognized that it is not in every case that a discount or mitigation is entitled as of right. Where the offence is extremely grave, the courts have determined that public interest outweighs the plea of guilt as a mitigating factor, in which instance it will not be taken into account. In the instant case however, the circumstances are not such as to justify the plea of guilt being ousted in favour of public interest. In this context the stage at which the accused pleaded guilty is also relevant.

WEIGHT OF THE DRUGS

[24] There is ample authority which stipulates that a sentence imposed should reflect to some extent, the weight or quantity of the drugs in the possession of an accused person. In *Public Prosecutor v Tia Ah Leng* Augustine Paul J stated inter alia:

> … I had occasion to consider this aspect of sentencing in drug cases in *Zaidon Shariff v Public Prosecutor* [1996] 4 CLJ 441 where I said at pp 446–447:
>
> > ... In my opinion the learned Magistrate's view that drug offences require a deterrent sentence is too wide and broad a statement. The appropriate sentence for each drug offence depends on its own peculiar circumstances. In particular the weight of the drugs found on a person plays a significant role in assessing sentence. In *Oloofen v Public Prosecutor* [1964] MLJ 305 Wee Chong Jin CJ emphasized the consideration to be given to the quantity of drugs involved in drug offences in assessing sentence. The same

> guideline applies event to more serious drug offences. In *Public Prosecutor v Ang Soon Huat* (*Mallal's Digest* 4th Ed 1994 Reissue Vol 5 No 2378) it was held that in drug trafficking cases the sentence should be proportionate to the gravity of the offence, which is the quantity of the drugs that was being trafficked. This is also manifested by the fact that the Dangerous Drugs Act 1952 itself prescribes different penalties for drug offences depending on the weight of drugs involved …

[25] This sentiment was echoed in *Surentheran Selvaraja v Public Prosecutor* [2006] 1 MLJ 641 by Abdul Aziz Mohamad JCA (as His Lordship then was):

> … Bearing in mind, no matter how important are such questions as that of public interest, in a case that does not have aggravating or suchlike circumstances, such as a previous conviction — and the appellant does not have a previous conviction — the sentence of imprisonment must, as far as possible, though not necessarily with mathematical accuracy be made to adhere to that policy. It would be manifestly wrong, for example, although allowed by s 39A(2)(d) to sentence a first offender to life imprisonment for possession of a mere 5 grammes, as it would be manifestly wrong, although so allowed, to sentence an offender, even though a first offender to only five years for possession of 14.9999 grammes, in the absence of special mitigating circumstances …

[26] The weight of the drugs in this case, primarily the 22,853 gms. of cannabis, a relevant factor that has to be given weight.

COMPARISON OF SENTENCES IN OTHER CASES FOR A SIMILAR OFFENCE

[27] Neither counsel for the accused nor the learned public prosecutor referred me to any cases where the quantity of drugs was similar to, or of an amount approximating that in the instant case. However in *Yusmarin bin Samsudin v Public Prosecutor* [1999] 4 MLJ 625, where the accused was finally convicted for the possession of 2,863.1 grams of cannabis the sentence imposed by the Court of Appeal was 18 years imprisonment and 12 strokes of the rotan. In so doing, the court held:

> … Under s 39A(2)(f) of the Dangerous Drugs Act 1952, the maximum punishment upon conviction is life and the minimum is not less than five years and whipping of not less than 10 strokes is mandatory. The severity of the sentence can only be to reflect Parliament's intention that conviction for being in possession of a large amount of any form of prohibited drugs must commensurate with the sentence to be passed based on the peculiar facts of each case. The substantial amount of cannabis found in the appellant's possession must be reflected in the sentence and public interest dictates that he should be severely punished as a deterrent to others who may be minded to behave like him.

[28] In *Public Prosecutor v Puteh Nordin & Anor* [1983] 2 MLJ 292, where the quantity of drugs was 2.87kg. or 28,700 grammes Ajaib Singh J imposed a sentence of lime imprisonment plus six strokes of the rotan. However in that case the charge was of trafficking, and at that time, the Act, prior to being amended to its current form, allowed for either the death penalty or imprisonment for life.

[29] In nearly all other cases where the quantity of drugs was approximate to the situation in the instant case, the charge was of trafficking, thereby attracting the penalty of death.

[30] As such it is evident that the large quantity of drugs in the possession of the accused in this case is a significant factor that must be given careful consideration in determining a suitable sentence.

SENTENCE

[31] Taking into consideration all the factors above, I order that the appropriate sentence to be passed on the accused in this case is a term of imprisonment of 13 years in respect of the first charge, two years for the second charge, two years for the third charge and two years for the fourth charge all of which are to run concurrently from the date of his arrest and whipping of 10 strokes.

Ordered accordingly.

Reported by Brendan Navin Siva